

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax

EMERGENCY AMENDMENT

12 CSR 10-103.380 Photographers, Photofinishers and Photoengravers, as Defined in Section 144.030, RSMo. The director proposes to amend the title, amend subsections (3)(C), (3)(E), (3)(F), and subsections (4)(D) through (4)(F).

PURPOSE: This rule is being amended due to TAFP HCS SCS SB 196, enacted by the 93rd General Assembly, 2005 and TAFP CCS HCS SB30, enacted by the 94th General Assembly, 2007.

*EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency amendment. This emergency amendment is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency amendment informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The director believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment filed Aug. ____, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008.*

(3) Basic Application of Tax.

(A) Sales of photoengravings, photostats, blueprints, electrotypes, stereotypes, wood engravings and the like, to consumers for use or consumption, whether on special order, contract or otherwise, are subject to tax.

(B) Sales of finished photographs by photographers are subject to tax. Services rendered by the photographer frequently represent a substantial portion of the total charges. Fees for the photographer's consultative and photographic services up to the point of previews are not subject to tax, if separately stated. Other charges for labor involved in creating the finished photographs are subject to tax even if separately stated. Sales by photographers are taxable because the true object of the photographers' customers is to obtain the finished photograph produced by the service.

(C) The sale of negative development services only, where no prints, slides or other tangible personal property are received, is not subject to tax. The developer must pay tax on materials and supplies used in the development process **because developing is a service that is not subject to tax.**

(D) Photographers, photofinishers, photoengravers, blueprinters and other persons purchasing tangible personal property such as paper, which becomes a component or an ingredient part of a finished product that will ultimately be sold at retail, may purchase their supplies under a resale exemption certificate.

(E) *[Supplies such as film, chemicals and other materials purchased for the photographer's own use or consumption are taxable.]* Chemicals that are intended to and do remain with the final product are considered an ingredient or component part of the final product for resale and are therefore not subject to tax.

(F) Equipment such as cameras and lenses, which is directly used to manufacture new **tangible** personal property intended to be sold ultimately at retail, is exempt from tax. Replacement parts for this exempt equipment are also exempt.

(G) A photographer who enters into an exclusive contract with an elementary or high school to photograph students is liable for tax on photographs sold to students. The sales are not exempt as sales to an exempt organization because the sales are made to the students, not to the school.

(4) Examples.

(A) A couple arranged for a photographer to take pictures at their wedding. The photographer charged \$150 to take the pictures, develop the film and print proofs. The \$150 separately stated labor charge for taking the pictures and developing the proofs is not subject to tax. The couple decides to purchase \$200 worth of finished pictures. The \$200 for the finished pictures is subject to tax.

(B) If the photographer in example (4)(A) does not separately state the labor charges the entire sale price is taxable.

(C) A person went to a photographer to have glamour portraits taken. The photographer met with the person to discuss the desired results and the purpose of these photographs. The photographer advised the person on clothing to wear, makeup tips, described the setting and lighting, and other means the photographer uses. The photographer took several pictures and created proofs for the person to preview. The photographer charged a nonrefundable "sitting fee." This sitting fee is not subject to tax because this is a distinct and separate charge from the photographs.

[(D)] A photographer purchases chemicals and other supplies used to develop photographs. These chemicals and supplies are not intended to remain with the photograph. These purchases are subject to tax because they are consumed in the developing process and do not become a component or ingredient part of the photograph.]

[(E)] **(D)** A photographer purchased new cameras and a new lens to replace a broken lens. The new cameras allow the photographer to photograph twice as many pictures. The photographer can purchase the cameras exempt because it increases productivity. The new lens would also be exempt as replacement equipment.

[(F)] **(E)** A photographer scans photographs into a computer for customers. If the photographer provides the customer a CD containing the images, the sale is taxable. However, if the photographer sends the images to customers via the Internet, the photographer has not sold tangible personal property and should not collect tax on this sale.

*AUTHORITY: section 144.270, RSMo [1994] **2000**. Original rule filed June 29, 2000, effective Dec. 30, 2000. Emergency amendment filed Aug. ____, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed rule, which covers the same material, is published in this issue of the **Missouri Register***